Please charge any additional fees under 37 CFR 1.16 or 1.17 which may be required by this paper, or credit any overpayment, to Deposit Account No. 19-2570.

REMARKS

Upon entry of this amendment, claims 17-40 will be pending in this application. Claims 1-12 are being canceled. Claims 13-16 were previously added and have been canceled.

Support for the present amendment is found throughout the specification and claims as originally filed, including in the specification at page 1/lines 17-22, page 1/line 37 to page 6/line 9, page 7/lines 17-24, page 8/lines 2-3, page 18/line 33 to page 20/line 32, page 21/lines 18-37, pages 86-87, and Example 30. No new matter is being added.

These claim amendments were made to better define particular embodiments of the invention, notwithstanding the Applicants' belief that the unamended claims would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the unamended (or similar) claims in another application, for the purpose of furthering Applicants' business goals and expediting the patent application process in a manner consistent with the PTO's Patent Business Goals.

None of the amendments to the claims is related to the statutory requirements for patentability unless expressly stated so herein. Applicants reserve the right to prosecute the originally filed claims, as well as any other claims supported by the specification, in the future.

The present claims as amended are directed to methods for the treatment of type II diabetes in a human or non-human mammal. As set forth in independent claim 17, the method comprises administering an effective, non-toxic amount of a compound selected from 5-(4-[2-(N-methyl-N-(2-pyridyl)amino)ethoxy]benzyl)-2,4-thiazolidinedione, a tautomeric form thereof, and a pharmaceutically acceptable solvate thereof, to a human or non-human mammal in need thereof. As set forth in independent claim 18, the method comprises administering an effective, non-toxic amount of a compound selected from a pharmaceutically acceptable salt of 5-(4-[2-(N-methyl-N-(2-pyridyl)amino)ethoxy]benzyl)-2,4-thiazolidinedione, a

tautomeric form of the salt, and a solvate of the salt, to a human or non-human mammal in need thereof. Dependent claims 19-40 set forth various further embodiments of the invention.

The points raised in the Office Action are now addressed.

Rejection under doctrine of obviousness type double patenting

In the Office Action dated May 3, 2002, claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of US Patent No. 5,521,201.

Claim 1 of US Patent No. 5,521,201 is directed to a method for the treatment and/or prophylaxis of atherosclerosis in a human or a non-human mammal which comprises administering to said human or non human mammal an effective amount of 5-(4-[2-(N-methyl-N-(2-pyridyl)amino)ethoxy]benzyl)-2,4-thiazolidinedione, or a tautomeric form thereof, and/or a pharmaceutically acceptable salt thereof and/or a pharmaceutically acceptable solvate thereof.

Claims 1-12 of the present application have been canceled, and new claims 17-40 are directed to methods for the treatment of type II diabetes in a human or non-human mammal, as more fully defined in the claims. It is respectfully submitted that the present claims are patentably distinct over the claims of US Patent No. 5,521,201. Reconsideration and withdrawal of the rejection is respectfully requested.

Applicants note commonly owned, US Patent No. 6,288,095, which claims a method for the treatment of Type II diabetes.[1] In order to expedite prosecution of the present application, Applicants are submitting herewith a Terminal Disclaimer under 37 CFR 1.321 over this patent.

Applicants note that an Amendment and Request to correct inventorship under 37 CFR 1.48(b) is being submitted concurrently herewith. Applicants will submit a Supplemental Declaration in accordance with 37

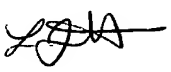
[1] A copy of this patent is provided with the Information Disclosure Statement filed concurrently with this response.

CFR 1.67, reflecting the change in inventorship and correcting clerical errors in the signed Declaration previously submitted, promptly upon receipt of the signed Supplemental Declaration.

Applicants believe that this reply is completely responsive to each ground of objection and/or rejection in the Office Action dated May 3, 2002. Further examination in light of this response is respectfully requested.

If it would facilitate examination of the application, the Examiner is invited to confer with the undersigned Attorney for Applicants.

Respectfully submitted,



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